

**United States Court of Appeals**  
**FOR THE EIGHTH CIRCUIT**

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No. 98-3677

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United States of America,

Appellee,

v.

Russell Petersen,

Appellant.

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\* Appeal from the United States  
\* District Court for the  
\* District of Nebraska.  
\* [UNPUBLISHED]  
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Submitted: April 19, 1999

Filed: April 21, 1999

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Before MORRIS SHEPPARD ARNOLD, BRIGHT, and MURPHY, Circuit Judges.

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PER CURIAM.

Russell Petersen pleaded guilty to receiving child pornography, in violation of 18 U.S.C. § 2252(a)(2), and the district court<sup>1</sup> sentenced him to 15 months imprisonment and 3 years supervised release. Petersen appeals. Counsel has filed a brief pursuant to Anders v. California, 386 U.S. 738 (1967). We affirm.

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<sup>1</sup>The Honorable Richard G. Kopf, United States District Judge for the District of Nebraska.

In the Anders brief, counsel argues the court should have granted Petersen's motion for a downward departure based on diminished capacity under U.S. Sentencing Guidelines Manual 5K2.13, p.s. (1997). However, because there is no indication in the record that the district court believed it lacked authority to depart on this basis, the court's discretionary decision to deny Petersen's motion is unreviewable. See United States v. Field, 110 F.3d 587, 591 (8th Cir. 1997).

After reviewing the entire record, we find no nonfrivolous issues. See Penson v. Ohio, 488 U.S. 75, 80 (1988). Accordingly, we affirm.

A true copy.

Attest:

CLERK, U.S. COURT OF APPEALS, EIGHTH CIRCUIT.